

UNITED STATES OF AMERICA,
 PETITIONER,

 V.

GERALD WAYNE TIMMS,
 RESPONDENT.

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) 5:08-HC-2156-BO
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APPEARANCES:

FOR THE GOVERNMENT:

FOR THE RESPONDENT:

COURT REPORTER: DONNA J. TOMAWSKI
STENOTYPE WITH COMPUTER AIDED TRANSCRIPTION

1 MARCH 29, 2011

2 **THE COURT:** IN THE TIMMS CASE, HAVE YOU GONE
3 FORWARD WITH YOUR DISCOVERY?

4 **MR. GRAY:** YES, YOUR HONOR, WE HAVE.

5 **THE COURT:** OKAY. SO YOU'VE PROVIDED THE
6 DOCUMENTS AND PROVIDED THE PSYCHIATRIC EVALUATION?

7 **MR. GRAY:** YES, YOUR HONOR, WE HAVE.

8 **THE COURT:** WHAT ARE WE WAITING ON THEN IN
9 TIMMS? HAVE THEY DONE THEIR DISCOVERY AND PROVIDED YOU
10 WITH ANYTHING?

11 **MR. GRAY:** WE HAVE NOT RECEIVED AN EXPERT REPORT
12 FROM THE OTHER SIDE YET, SIR, OR ANY DISCOVERY AT THIS
13 TIME.

14 **THE COURT:** DO YOU HAVE ANY DISCOVERY
15 OUTSTANDING IN TIMMS?

16 **MR. GRAY:** NOT FROM US, YOUR HONOR.

17 **THE COURT:** OKAY. ALL RIGHT. MR. TARLTON,
18 WHERE DO YOU STAND ON THE DISCOVERY ASPECT OF THE CASE?

19 **MR. TARLTON:** YOUR HONOR, WE RETAINED AN EXPERT
20 WHO'S IN THE PROCESS OF REVIEWING THE DOCUMENTS WE
21 RECEIVED ON FEBRUARY 16, I THINK, THE DOCUMENTARY
22 DISCLOSURES. THE FIRST EXPERT REPORT WAS DELIVERED TO US
23 ON MARCH 3 AND THEN A SECOND EXPERT REPORT FROM ANOTHER
24 EXPERT WAS DELIVERED ON, I THINK, MARCH 11. OUR EXPERTS
25 HAVE BEEN REVIEWING ALL OF THESE MATERIALS.

1 I PUT IN A MESSAGE TO HIM YESTERDAY, I THOUGHT HE WAS
2 GOING TO HAVE SOME KIND OF A REPORT --

3 **THE COURT:** IS YOUR EXPERT A PSYCHOLOGIST OR
4 PSYCHIATRIST?

5 **MR. TARLTON:** FORENSIC PSYCHOLOGIST, DR. JOHN
6 WARREN, LOCATED IN WINSTON-SALEM, YOUR HONOR.

7 **THE COURT:** IS HE PREPARING A REPORT HIMSELF?

8 **MR. TARLTON:** YES, YOUR HONOR. WE APPLIED FOR
9 CJA FUNDS TO HIRE HIM. WE'RE NOT HIDING THE BALL, IT WAS
10 AN EX PARTE REQUEST BUT WE HAVEN'T FORMALLY DISCLOSED JOHN
11 WARREN TO THE GOVERNMENT AT THIS POINT. WE'RE SIMPLY
12 LOOKING TO GET HIS REPORT AND IF WE INTEND TO USE
13 DR. WARREN THEN OBVIOUSLY WE WILL HAVE TO COMPLY WITH THE
14 DISCOVERY DISCLOSURES.

15 **THE COURT:** WHAT'S HE GOING TO DO? IS HE GOING
16 TO EXAMINE YOUR CLIENT?

17 **MR. TARLTON:** AT THIS POINT WE'RE NOT PROCEEDING
18 IN THAT MANNER, YOUR HONOR. SIMPLY DOING AN INDEPENDENT
19 EVALUATION OF THE SAME NATURE THAT THE GOVERNMENT'S TWO
20 EXPERTS HAVE DONE IN THIS CASE.

21 **THE COURT:** OKAY. HOW FAR ALONG ARE YOU FOR
22 TRIAL?

23 **MR. TARLTON:** YOUR HONOR, WE RECEIVED A LOT OF
24 INFORMATION, OVER 2,600 PAGES. I REVIEWED THE DISCOVERY
25 ONE TIME. I'M WAITING TO HEAR BACK FROM MY EXPERT SO I

1 CAN BECOME ENLIGHTENED AS TO SOME OF THE AREAS OF THE -- I
2 HAVE DONE SOME OF MY OWN INDEPENDENT RESEARCH OF IT BUT
3 I'M NOT QUALIFIED IN THAT AREA.

4 THEY HAVE NOW TWO EXPERT REPORTS. WE'RE GOING TO
5 HAVE TO PREPARE TO CROSS-EXAMINE THOSE EXPERTS IN THIS
6 CASE.

7 YOUR HONOR IS AWARE WE ALSO FILED FOR CJA FUNDING FOR
8 A PARALEGAL IN THIS MATTER TO PROVIDE LITIGATION SUPPORT.
9 MR. JOHNNY GASKINS, A FORMER LAWYER, IS NOW WORKING AS A
10 PARALEGAL, HE'S NOT PRACTICING LAW. HE'S HANDLING
11 LITIGATION SUPPORT IN THESE 4248 CASES. WE ARE SEEKING
12 FUNDING FOR THAT.

13 SO THAT BEING SAID, IT'S HARD TO GIVE AN EXACT
14 PREDICTION, ALTHOUGH WE WILL BE FULLY PREPARED FOR TRIAL.
15 AT LEAST WITH OUR EXPERT REPORTS IN HAND, WE DO EXPECT TO
16 HAVE THAT WITHIN THE NEXT WEEK OR SO, I IMAGINE, BASED ON
17 PRIOR REPRESENTATIONS FROM OUR EXPERT.

18 **THE COURT:** HOW LONG HAS MR. TIMMS BEEN IN
19 CUSTODY? WAS HE A 2007 CASE?

20 **MR. TARLTON:** I'M NOT SURE I FOLLOW YOUR HONOR.

21 **THE COURT:** WHEN WAS HE FIRST CERTIFIED?

22 **MR. TARLTON:** NOVEMBER OF 2008. NEARLY 28
23 MONTHS. AS YOUR HONOR IS AWARE, WE FILED MOTIONS STATING
24 THAT MR. TIMMS IS CONSTITUTIONALLY ENTITLED TO PRETRIAL
25 RELEASE OR A PROBABLE CAUSE HEARING IN THE ALTERNATIVE,

1 SOMETHING WE ARGUE WOULD HAVE TO GO FORTH WITHOUT EXPERTS.
2 GIVEN THE AMOUNT OF DELAY THAT OCCURRED IN THE CASE, HE
3 WAS CONSTITUTIONALLY ENTITLED TO THAT.

4 THE GOVERNMENT HAS NOW HAD ENOUGH TIME TO RETAIN TWO
5 EXPERTS, HAVE THEM GENERATE EVALUATIONS AND WE CERTAINLY
6 NEED TIME TO EFFECTIVELY CONFRONT THAT.

7 **THE COURT:** OTHER THAN THE CERTIFICATION, DO I
8 HAVE ANY OF THE CURRENT EXAMINATIONS? I DON'T THINK I
9 HAVE THAT HERE. DO YOU HAVE -- YOU HAVEN'T FILED ANYTHING
10 WITH THE COURT?

11 **MR. GRAY:** YOUR HONOR, WE HAVE NOT FILED THEM.
12 THEY WILL BE FILED BY THE END OF THE DAY.

13 **THE COURT:** OKAY. HIS CERTIFICATION GOES BACK
14 TO JUNE OF 2008 AND THAT'S BY ANTHONY JIMENEZ. I'M
15 INCLINED TO SET IT FOR TRIAL ON MAY 23, AND EXPECT TO DO
16 THAT.

17 HIS PRIOR CONDUCT IS PRETTY EGREGIOUS. IF YOU JUST
18 BRING FORWARD ALL THE RECORDS THAT YOU HAVE, I THINK WE'LL
19 BE ABLE TO HAVE A TRIAL ON IT. IT DOESN'T LOOK LIKE A
20 REALLY CLOSE CASE FROM HERE, BUT I'LL WAIT ON THAT.

21 WHAT ARE YOU GOING TO HAVE AT TRIAL? ARE YOU GOING
22 TO HAVE EVIDENCE THAT HE'S NOT SEXUALLY DANGEROUS AND NOT
23 SUFFERING FROM A MAJOR MENTAL DISORDER?

24 **MR. TARLTON:** ABSOLUTELY, YOUR HONOR. WE WILL
25 EXPECT TO CROSS-EXAMINE. THIS RECIDIVISM SIGN IS

1 INCREDIBLY CONTROVERSIAL IN THE MEDICAL COMMUNITY.

2 THERE'S NO CONSISTENCY ON IT. IT'S NOT JUST THAT HE DID
3 SOMETHING HORRIBLE IN THE PAST, THEY HAVE TO SHOW
4 PROPENSITY TO RECIDIVATE. THERE'S SIMPLY -- WELL, WE'RE
5 GOING TO HAVE A TRIAL ON IT.

6 **THE COURT:** YOU CAN TALK TO ME NOW, I'M LEARNING
7 AS I GO ALONG.

8 **MR. TARLTON:** I'M LEARNING TOO, YOUR HONOR.
9 THAT'S OUR MAIN POINT IN HAVING OUR OWN EXPERT.

10 **THE COURT:** THERE ISN'T GOING TO BE ANY DISPUTE
11 ABOUT THE BARBARIC EVENTS THAT HAPPENED IN THE PAST, THOSE
12 ARE WELL DOCUMENTED.

13 **MR. TARLTON:** THE FACT THAT THE CONVICTIONS ARE
14 THERE, ABSOLUTELY.

15 **THE COURT:** AND SO THE QUESTION IS, THE NARROW
16 QUESTION, OF WHETHER ALL OF THESE THINGS BEING
17 UNCONTROVERTED, DOES THAT ESTABLISH THAT HE HAS A
18 PROPENSITY TO CONTINUE TO DO THEM IN THE FUTURE. IF HE
19 ANSWERS YES, THEN HE GETS DETAINED; IF IT'S NO, THEN HE
20 DOESN'T.

21 **MR. TARLTON:** MY PRELIMINARY RESEARCH --

22 **THE COURT:** WHAT KIND OF SUPERVISED RELEASE IS
23 HE FACING?

24 **MR. TARLTON:** HE HAS FIVE YEARS SUPERVISED
25 RELEASE THAT WAS SUPPOSED TO START IN 2008, OR THREE

1 YEARS. HE'S SAYING THREE YEARS, I THOUGHT IT WAS FIVE.

2 **THE COURT:** OKAY. WHAT DO YOU NEED TO DO TO BE
3 ABLE TO TELL ME THAT YOU'RE READY TO GO TO TRIAL IN MAY?

4 **MR. TARLTON:** REALLY, JUST SIMPLY NEED MY EXPERT
5 TO COME TO ME WITH HIS REPORT. I JUST NEED TO BE ABLE TO
6 EFFECTIVELY CROSS-EXAMINE THE TWO EXPERTS THAT THEY ARE
7 INTENDING TO PUT ON. THAT'S THE HEART OF THIS CASE.

8 **THE COURT:** THE HEART OF IT IS, YOU KNOW, DO WE
9 HAVE RELIABLE PROOF THAT HE'S GOING TO DO IT AGAIN, AND IF
10 SO, HE SHOULDN'T BE RELEASED.

11 **MR. TARLTON:** RIGHT.

12 **THE COURT:** I THINK WE CAN GET TO THAT POINT.
13 ARE YOU IN LINE WITH THIS?

14 **MR. GRAY:** YES, YOUR HONOR. WE WOULD ONLY ASK
15 THAT THERE BE A DEADLINE SET FOR THE EXPERT REPORT TO BE
16 PROVIDED TO THE GOVERNMENT.

17 **THE COURT:** THEIR EXPERT REPORT?

18 **MR. GRAY:** YES, YOUR HONOR.

19 **THE COURT:** LET'S MAKE THAT APRIL 18. THAT
20 GIVES YOU MORE THAN A MONTH BEFORE THE TRIAL SETTING.

21 **MR. GRAY:** THANK YOU, YOUR HONOR.

22 **THE COURT:** ARE YOU OKAY WITH THAT, MR. TARLTON?

23 **MR. TARLTON:** ABSOLUTELY. I DON'T HAVE THAT
24 REPORT IN HAND BUT I WILL PUT PRESSURE ON, YOU KNOW, GET
25 IN IMMEDIATE TOUCH WITH OUR EXPERT.

1 **THE COURT:** I'D LIKE TO GET HALL AND TIMMS ON
2 LINE FOR DISPOSITION AND SHOW THAT WE'RE DOING SOMETHING
3 HERE IN THIS DISTRICT.

4 ANYTHING ELSE RIGHT NOW?

5 **MR. TARLTON:** ONE ISSUE, YOUR HONOR, MY CLIENT
6 RAISED WITH ME. I'M NOT SURE IF THIS IS THE PROPER FORUM
7 TO BRING IT UP, BUT HIS FIANCEE, KAREN ATKINS, IS PRESENT
8 HERE TODAY.

9 **THE COURT:** HE WHAT?

10 **MR. TARLTON:** MR. TIMMS' FIANCEE. AS HE
11 CONTINUES TO BE DETAINED BEFORE THERE'S BEEN ANY JUDICIAL
12 REVIEW IN THIS CASE, HE HAS BEEN DENIED ANY VISITATION
13 RIGHTS WITH HER. I SUGGESTED TO MY CLIENT THAT HE PURSUE
14 ADMINISTRATIVE REMEDIES. MY CLIENT'S POSITION IS THAT
15 HE'S NOT TECHNICALLY DEEMED TO BE A PRISONER, RATHER A
16 DETAINEE, HE'S NOT ENTITLED TO REMEDIES TO SEEK THAT SHE'S
17 ON THE VISITATION LIST. HE WANTED ME TO BRING THAT TO THE
18 COURT'S ATTENTION. I'M NOT SURE WHAT THE COURT CAN DO IN
19 THAT MATTER.

20 **THE COURT:** I CAN'T DO ANYTHING INFORMALLY. IF
21 YOU ARE GOING TO TAKE SOME ACTION, YOU NEED TO DO IT
22 THROUGH THE NORMAL PROCEDURES. IT'S UP TO THE LAWYER TO
23 TAKE THE INITIATIVE.

24 **MR. TARLTON:** YES, YOUR HONOR.

25 **THE COURT:** ALL RIGHT. ANYTHING FROM THE

1 GOVERNMENT?

2 **MR. GRAY:** NO, YOUR HONOR.

3 **THE COURT:** ALL RIGHT. I'LL ENTER AN ORDER TO
4 THAT EFFECT AND WE'LL GO FORWARD WITH THIS CASE IN MAY.

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15 END OF TRANSCRIPT
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1 CERTIFICATE

2 THIS IS TO CERTIFY THAT THE FOREGOING TRANSCRIPT OF
3 PROCEEDINGS TAKEN AT THE CIVIL SESSION OF UNITED STATES
4 DISTRICT COURT IS A TRUE AND ACCURATE TRANSCRIPTION OF THE
5 PROCEEDINGS TAKEN BY ME IN MACHINE SHORTHAND AND
6 TRANSCRIBED BY COMPUTER UNDER MY SUPERVISION.

7 THIS THE 25TH DAY OF AUGUST, 2011.

8
9 /S/ DONNA J. TOMAWSKI

10 DONNA J. TOMAWSKI
11 OFFICIAL COURT REPORTER
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